CA-13/5

(2)
(4)

**IN THE HIGH COURT OF JUDICATURE AT**

**BILASPUR (C.G.)** Division Bench

**M.A.(C ) No 159 /2007**

**APPELLANTS** :1. Smt. Urmila Bai, wife of Late Dhannalal Verma, aged about 45 years

**Claimants**

2. Ku. Gangotri, S/o. late Dhanna Lal Verma, aged about 17 years.

3. Ku. Hemlata, Son of late Dhanna Lal Verma, aged about 14 years.

4. Omprakash, son of late Dhanna Lal Verma, aged about 11 years.

5. Ku. Devkumari, daughter of Late Dhanna Lal Verma, aged about 8 years,

6. Phalesh, son of late Dhannalal Verma, aged about 5 years,

No.2 to 6 Minors mother Smt. Urmila Bai, widow of late Dhanna Lal Verma, all appellants resident of village Dumardih (Khurd), P.S. Ghumka, Tahsil & District Rajnandgaon (C.G.).

P.R. No. 359/07 Presented by Shri Shyamalan Jamindar dated 11.4.07

(3)

(5)

**VERSUS**

**RESPONDENT** : Policy Issuing Office,
Branch Manager, The Oriental Insurance Company Limited,
Kamthi Line, Rajnandgaon (C.G.)

AFR

(21)

**HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR**

**DIVISION BENCH**

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**CORAM : HON'BLE SHRI H.L. DATTU, CJ &**
**HON'BLE SHRI V.K. SHRIVASTAVA, J.**

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**MISC. APPEAL (C) NO. 159 OF 2007**

**APPELLANTS** Smt Urmila Bai and others

Versus

**RESPONDENT** Policy Issuing Office, Branch Manager, The Oriental Insurance Company Limited, Kamthi Line, Rajnandgaon. (CG)

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Present : Shri Gautam Khetrapal, counsel for the appellants.

Shri Abhishek Sinha, counsel for the respondent.

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**ORAL ORDER**
**(Passed on 13th February, 2007)**

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "the Act, 1988") filed by the legal representatives of the deceased/owner (Dhanna Lal) of the motorcycle involved in the accident, whose claim has been dismissed vide impugned award dated 11-10-2006 by the First Additional Motor Accident Claims Tribunal, Rajnandgaon (henceforth "the Tribunal") in Claim case No.104 of 2005.

(2) Deceased Dhanna Lal was owner of motorcycle bearing registration No.CG-08E-5189 (henceforth "the vehicle"). When Dhanna Lal (since deceased) riding his vehicle was returning to his village, one unidentified vehicle dashed backside of his vehicle, thereby he met with an accident, sustained injuries and succumbed to those. The vehicle was

insured with the respondent. The legal representatives of the deceased Dhanna Lal filed an application under Section 163A of the Act, 1988 for grant of compensation. The respondent objected to the claim and took specific plea that the deceased himself was owner of the motorcycle and he being the first party to the insurance his legal representatives have no right to claim compensation on his death as a result of the motor accident. Even otherwise, as a result of insurance contract, deceased being the first party, compensation of Rs.1,00,000/- has been paid to appellant No.1, who is wife of the deceased. Learned Tribunal after due consideration of all the material on record, hold that the application under Section 163A of the Act, 1988 is not maintainable and accordingly vide impugned award dismissed the claim.

(3) Admittedly, the deceased himself was owner of the vehicle, his legal representative/wife has already been paid by the Insurance Company a sum of Rs.1,00,000/- under personal accident claim in accordance with the insurance contract.

(4) Learned counsel for the appellants contented that in accordance with Section 163A of the Act, legal representatives of the owner of the vehicle who died in accident are entitled to claim compensation against the Insurance Company. He also relied on the judgment rendered by Hon'ble the Apex Court in the case of **Dhanraj Vs New India Assurance Co. Ltd. and another** reported in **(2004) 8 SCC 553**.

(5) To appreciate the arguments advanced by learned counsel for the appellants following provisions as well as law laid down by Hon'ble the Apex Court in the case of **Dhanraj** (supra) are necessary for consideration :

Sections 140(1), 147(1), 149(1), 163A and 163(B) of the Act, 1988 reads as below :

> **"140. Liability to pay compensation in certain cases on the principle of no fault.** – (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section."
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> **"147. Requirements of polices and limits of liability.**—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
>
> (a) is issued by a person who is an authorized insurer; or
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily [1][injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
>
> Provided that a policy shall not be required—
>
> (i) to cover liability in respect of the death, arising out of any in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee--
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> (a) engaged in driving the vehicle, or
> (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.— For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

"**149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.**—(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [1][or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

"**163A. Special provisions as to payment of compensation on structured formula basis.--** (1) Not withstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

"**163B. Option to file claim in certain cases.**— Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both."

In the case of **Dhanraj** (supra), Hon'ble the Apex Court at paras 8, 9 and 10 observed thus :

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of *Oriental Insurance Co. Ltd.* v. *Sunita Rathi* it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs 4989 paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

(6) If any accident occurs and person dies, his legal representatives may bring an application for compensation in accordance with Sections 163A or 166 of the Act. So far as the provisions contained in Sections140 and 163A of the Act, they are more or less identical and the representatives have been given liberty to invoke either of them. Therefore, both the Sections being similar the provisions relating to Section 140 will also govern the provisions of Section 163A of the Act. From Section 163A of the Act, it is clear that the representatives of the deceased may claim compensation either with the owner or insurer of the vehicle. However, if owner has also insured his vehicle to cover his personal injuries for unlimited extent the position will be different. Here in the instant case, owner of the vehicle has insured his vehicle upto the extent of Rs.1,00,000/- towards his personal injuries and the said amount has been satisfied by the Insurance Company (respondent). In absence of insurance for personal injuries of owner of the vehicle for unlimited amount, legal representatives of the deceased owner of the vehicle who received the claim in accordance with the terms of insurance has no further right to claim beyond the insurance contract. So far as third party risk is concerned, the liability of insurance company is only to indemnify the owner of the vehicle. Undoubtedly the present case does not fall within the edifice of third party risk.

(7) We are of the considered view that since the deceased was owner of the vehicle, so far as third party risk is concerned, his legal representatives are not entitled to claim compensation in accordance with the provisions of the Act, 1988, so far as insurance towards personal

injuries upto the extent of Rs.1,00,000/- is concerned, the said claim has already been satisfied by the respondent/Insurance Company.

(8) In the result, the appeal being devoid of merit deserves to be dismissed and is accordingly dismissed. However, if appellants have any right alive under any other enactment they are at liberty to invoke it. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Subbu
Gowri